

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1211 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DHIMA GRAM PANCHAYAT

Versus

AGRI.PRODUCE MARKET COMMITTEE & ORS.

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Appearance:

MS KUSUM M SHAH for Petitioner

MR MC BAROT for Respondent No. 1

MR MUKESH PATEL for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/01/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The challenge is made by the petitioner, Dhima Gram Panchayat, village Dhima, Taluka Vav, District Banaskantha, to the Notifications dated 9.2.79 and 20.3.80 issued by the respondent under Section 5(1) and under Section 6, respectively, of the Agricultural

Produce Market Act, 1963 (hereinafter referred to as the 'Act 1963'). Challenge has further been made to the notice dated 13.1.84 of the Agricultural Produce Market Committee, Vav, under which, the petitioner-Gram Panchayat was directed that Vav taluka has been declared as market area for the purpose of trading in various agricultural produce as also, sheep, cattle, Buffaloes, Goats, etc. The petitioner was called upon not to organize any Pashu Mela henceforth in the area aforesaid.

3. The challenge has been made to the aforesaid Notifications by the learned counsel for the petitioner on various grounds. I do not consider it to be appropriate in this case to decide the matter on merits for the reasons to be given out in the later part of the judgment. On 16th March 1984, the Court has passed an order which reads as under:

"Heard the learned advocates. My earlier order dated 8.3.84 stands modified to this extent that the Panchayat will be free to utilize 50% of the collections and the rest of 50% shall be kept intact.

Miss Shah states that she is not going to challenge entry Nos.3, 4 and 5 of schedule and therefore, there is no question of referring the matter to D.B.

To be heard finally on 23.3.84."

4. So, under the interim order which has been granted by this Court, the petitioner-Gram Panchayat has organized Pashu Mela in the area which has been declared to be market yard under the provisions of the Act 1963, subject to the conditions laid down by the Court. It is a litigation between two authorities. The petitioner is a constitutional authority at the grass-root level whereas the respondent No.1 is a statutory authority constituted under the provisions of the Act 1963. One of the grievances made by the learned counsel for the petitioner is that the main source of income of Gram Panchayat is the income which it derives from holding Pashu Melas and in case these Pashu Melas are discontinued, the Gram Panchayat will have no resource for development of the area as well as providing facilities to the residents thereof. The learned counsel for the respondent-State, on the other hand contends that the market committee is being constituted to regulate the agricultural produce in the market area so that the producers thereof may get maximum benefits of the same. So it is by and large an authority which has been constituted for the benefits of the farmers. As stated

earlier, the authorities are litigating for benefits of people; in one case, the villagers, and in another, the farmers. Litigation in this Court at the instance of petitioner, the statutory authority under the provisions of Constitution of India and the respondent No.1, a statutory authority under the Act 1963, is difficult to appreciate. This Court has taken the view in many cases that litigation before this Court between Departments or Public Sector Undertakings or State does not lie unless clearance is given by the Government to either of it for filing litigation. This Court has given directions to the State of Gujarat for constituting high level committee for the purpose of resolving out dispute in between the Department against other Department, Department against Public Sector Undertakings or vice-versa, or amongst statutory authorities and constituted authorities. The respondent, State Government, has not brought to the notice of the Court as to what ultimately has been done by it in the matter. These directions were given by the Court in the light of directions as given by the Hon'ble Supreme Court in the case of O.N.G.C. v. Collector, Central Excise, reported in 1991(4) JT SC 158. In this case, the O.N.G.C. had challenged the order passed by the Collector, Central Excise and the Hon'ble Supreme Court has observed that this dispute should not have come to the Court, and the same should be resolved out by some high level committee constituted by the Government and only where the Committee fails to resolve out the dispute, then on its certification and not otherwise, the matter should be referred to the Court. The present one is exactly the same case where the dispute is in between the constitutional authority and a statutory authority. Both are litigating here for benefits of villagers and farmers. Justification has been given by respondent No.2 for creating the market yard in the area where the petitioner is holding cattle fair, to utilize the amount received, for the benefit and welfare of farmers and the petitioner is justifying its action to hold fair so that the income derived therefrom can be used for the benefit and welfare of the villagers of the area. The petitioner has not, before approaching this Court, approached the State Government. It is a case where by exercise of powers under Section 6 of the Act 1963, the market area has been constituted and as such, the sale of agricultural produce in the area is to be regulated under the provisions of the Act, aforesaid. The Panchayat, after creation of this market yard, would have been divested of its right to hold the Pashu Mela in the area which would certainly result in denial of receipt of income to it. Explanation given by the learned counsel

for the petitioner is that in case it would have approached the State Government, the matter would not have been decided by the State Government expeditiously and consequently it would not have been possible for it to organize Pashu Mela after approaching the State Government. By approaching this Court, the Court has protected the petitioner by grant of interim relief and it is holding Pashu Mela for all these years. I do appreciate the anxiety of the petitioner to approach this Court. The Government is certainly not deciding the matters expeditiously and furthermore, interim reliefs are also not being granted. But it cannot be said to be a legal and justified excuse for approaching this Court directly. The petitioner is a constitutional authority and it should have appraised the Government for resolving the dispute at the earliest. If this constitutional authority goes by this impression and feeling, then what expectation can an ordinary man have from the Government. Be that as it may. I hereby direct that the dispute interse of the petitioner and respondent No.1 has to be decided by a high level committee to be constituted by the State Government. As stated earlier, till now this Court is not being known as to whether some high level committee has been constituted or not for resolving out these disputes of constitutional authorities and statutory body. In the circumstances, it is not desirable to give directions on the same lines, but the direction should be given to constitute a high level committee so that the matter is taken up and decided.

5. In the result, this Special Civil Application is disposed of with direction to the State of Gujarat to constitute a high level committee of three members under the chairmanship of the Chief Secretary of the State of Gujarat and two other members, namely, Secretary to Finance Department and Secretary to the Department which is looking after the agricultural produce market committees and the Gram Panchayats. If there are two different Secretaries for these two Departments, then the Committee should be constituted of four members, i.e. the Secretary of each Department should be there. The committee shall decide the matter within a period of three months from the date of receipt of application from the petitioner and if it so desires, then both the parties may be given personal hearing. The petitioner shall make its representation in connection with the grievances made by it in this Special Civil Application addressed to the Chief Secretary of the State of Gujarat within a period of one months from the date of receipt of certified copy of this Order. The office is directed to send a copy of this Order to the Chief Secretary of the

State of Gujarat. It shall also be the duty of the petitioner to send a copy of this order to the Chief Secretary, State of Gujarat.

6. The interim relief, which has been granted by this Court shall continue till the matter is decided by the committee aforesaid. Rule stands disposed of in aforesaid terms with no order as to costs.

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